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8 **UNITED STATES DISTRICT COURT**
9 **EASTERN DISTRICT OF CALIFORNIA**
10

11 JULIO A. ANAYA,

12 Petitioner,

13 v.

14 B. CATES,

15 Respondent.

Case No. 1:21-cv-00737-SAB-HC

ORDER TO SHOW CAUSE WHY
PETITION SHOULD NOT BE DISMISSED
FOR FAILURE TO EXHAUST STATE
REMEDIES

16
17 Petitioner is a state prisoner proceeding pro se with a petition for writ of habeas corpus
18 pursuant to 28 U.S.C. § 2254.

19 **I.**

20 **DISCUSSION**

21 On May 7, 2021, the Court received the instant petition for writ of habeas corpus. (ECF
22 No. 1). Although it is unclear, Petitioner, who is currently housed at the California Correctional
23 Institution (“CCI”) in Tehachapi, appears to challenge his 2020 Ventura County Superior Court
24 convictions and sentence on various due process grounds in addition to challenging CCI’s
25 disapproval of Petitioner’s requests for early release and sentence recall. (ECF No. 1 at 3–4).¹

26 Rule 4 of the Rules Governing Section 2254 Cases requires preliminary review of a
27 habeas petition and allows a district court to dismiss a petition before the respondent is ordered

28 ¹ Page numbers refer to the ECF page numbers stamped at the top of the page.

1 to file a response, if it “plainly appears from the petition and any attached exhibits that the
2 petitioner is not entitled to relief in the district court.”

3 Here, it appears that Petitioner may have failed to exhaust the claims that he raises in the
4 instant petition. A petitioner in state custody who is proceeding with a petition for writ of habeas
5 corpus must exhaust state judicial remedies. 28 U.S.C. § 2254(b)(1). The exhaustion doctrine is
6 based on comity to the state court and gives the state court the initial opportunity to correct the
7 state’s alleged constitutional deprivations. Coleman v. Thompson, 501 U.S. 722, 731 (1991);
8 Rose v. Lundy, 455 U.S. 509, 518 (1982). A petitioner can satisfy the exhaustion requirement by
9 providing the highest state court with a full and fair opportunity to consider each claim before
10 presenting it to the federal court. O’Sullivan v. Boerckel, 526 U.S. 838, 845 (1999); Duncan v.
11 Henry, 513 U.S. 364, 365 (1995); Picard v. Connor, 404 U.S. 270, 276 (1971).

12 If Petitioner has not sought relief in the California Supreme Court, the Court cannot
13 proceed to the merits of his claims. 28 U.S.C. § 2254(b)(1). Although the petition states that
14 Petitioner did not file a direct appeal, did not seek the highest level of administrative review
15 available, and did not file any other petitions (ECF No. 1 at 5), it is possible that Petitioner
16 presented his claims to the California Supreme Court and failed to indicate this to the Court.
17 Thus, Petitioner must inform the Court whether each of his claims has been presented to the
18 California Supreme Court, and if possible, provide the Court with a copy of the petition filed in
19 the California Supreme Court that includes the claims now presented and a file stamp showing
20 that the petition was indeed filed in the California Supreme Court.

21 II.

22 ORDER

23 Accordingly, Petitioner is ORDERED to SHOW CAUSE within **THIRTY (30) days**
24 from the date of service of this order why the petition should not be dismissed for failure to
25 exhaust state remedies.

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1 Petitioner is forewarned that failure to follow this order will result in a recommendation
2 for dismissal of the petition pursuant to Federal Rule of Civil Procedure 41(b) (a petitioner's
3 failure to prosecute or to comply with a court order may result in a dismissal of the action).

4
5 IT IS SO ORDERED.

6 Dated: May 14, 2021


UNITED STATES MAGISTRATE JUDGE